

BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA

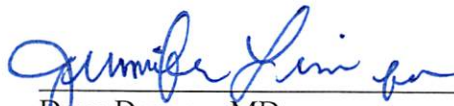
In the Matter of the Emergency Medical Technician- Paramedic License Held by:) Enforcement Matter No. 19-0033
) OAH No. 2019090011
)
WILLIAM CLARK,) **DECISION AND ORDER**
License No. P37190)
Respondent.)
)
)
)

The attached Proposed Decision and Order dated January 21, 2020, is hereby adopted by the Emergency Medical Services Authority as its Decision in this matter. The Decision shall become effective on February 21, 2020.

It is so ordered.

DATED:

1/23/2020



Dave Duncan, MD,
Director
Emergency Medical Services Authority

**BEFORE THE
EMERGENCY MEDICAL SERVICES AUTHORITY
STATE OF CALIFORNIA**

In the Matter of the Accusation against:

WILLIAM CLARK, Respondent.

Case No. 19-0033

OAH No. 2019090011

PROPOSED DECISION

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 8 and 9, 2020, in Sacramento, California.

Cynthia Curry, Attorney, appeared on behalf of complainant Sean Trask, Chief, EMS Personnel Division of the Emergency Medical Services Authority (EMSA) of the State of California.

Joseph Rose, Attorney at Law, represented William Clark (respondent), who was present at hearing.

Evidence was received, the record was closed, and the matter submitted for decision on January 9, 2020.

FACTUAL FINDINGS

1. On February 16, 2017, EMSA issued respondent Emergency Medical Technician-Paramedic (EMT-P) license number P37190 (license). The license will expire on February 28, 2021, unless renewed or revoked.

2. On August 22, 2019, complainant, acting solely in his official capacity, signed and thereafter filed the Accusation. Complainant alleged that respondent's license is subject to discipline based on alleged unprofessional conduct that occurred on November 27, 2018, when respondent responded to a 911 emergency call regarding a woman in labor. While in the ambulance, respondent took a photo of the woman, D.H., and her newborn, and distributed the photo.

3. Respondent timely filed a Notice of Defense to the Accusation. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Background

4. EMSA is the state body responsible to coordinate and integrate all state emergency medical services (EMS) under the Prehospital Emergency Medical Care Personnel Act, Health and Safety Code section 1797, et seq. California Department of Forestry and Fire Protection (CalFire) in El Dorado County operates an Advanced Life Support program under the medical direction and management of the El Dorado County EMS Agency, a local agency EMSA oversees. As a local EMS agency, El Dorado County EMS is statutorily mandated to establish policies and protocols that govern and assure medical control of the El Dorado County's emergency medical services

system, according to state standards. (Health & Saf. Code, § 1797.220; Cal. Code Regs., tit. 22, § 100170.) In compliance with the enabling statutes and regulations, El Dorado County EMS adopted policies that define and govern the roles, responsibilities, and scope of practice of accredited prehospital responders employed by approved EMS providers such as CalFire.

5. The El Dorado County Emergency Medical Services Agency Field Policies regarding on-scene photography define the parameters for taking photographs or video during emergency scene operations:

(1) All personnel are permitted to photograph or video on scene so long as the images are taken with department issued equipment at public scenes or homes and businesses with proper permission.

(2) Personal devices: cell phone cameras, video cameras, digital cameras and film cameras are **NEVER** permitted to take on-scene photos at any time by any personnel.

(3) Photographs or video may be taken of rescue situations, mechanism of injury at motor vehicle collisions, and patient care procedures without identifiable features.

(4) Photographs or video inside the patient compartment of an ambulance or private residence are NOT permitted.

(5) All images are solely the property of El Dorado County EMS Agency. No personnel shall use, print, copy, scan and/or retain photographs or video of an incident scene.

Images shall be stored with the patient care record as part of the documentation.

(6) All personnel are prohibited from posting images on personal web sites, any social media site or other public safety agency websites, emailing images to friends, colleagues or others in the EMS industry, sharing or distributing in any manner.

(Emphasis in original.)

6. CalFire promulgated an "Employee Code of Conduct" (Code of Conduct) that applies to all CalFire employees. The Code of Conduct establishes expectations for employees and outlines the high value CalFire places on ethics and professionalism. Section 8 of the Code of Conduct states: "Safeguard any use of confidential information, gained by virtue of my position, for the purposes of performing the duties I am assigned."

November 27, 2018 Incident

7. In the early-morning hours of November 27, 2018, respondent was on duty with CalFire, Station 89, assigned to Medic 89, a CalFire ambulance. His partner, Brandon Barrett, drove the ambulance. They received an emergency dispatch to a home where a woman, D.H., was in labor, and progressing quickly. When respondent and Firefighter Barrett arrived, a fire engine from the Cameron Park Fire Department was on-scene, with Firefighter/Paramedic Gary Hartman providing patient care. A collective decision was made to transport D.H. to the Kaiser Roseville hospital, which was farther than the nearest hospital, but D.H.'s choice.

8. D.H. was loaded into the ambulance with Firefighter Barrett driving, and respondent and Firefighter Hartman providing patient care. D.H. had no clothing or belongings with her in the ambulance. En route to the hospital, D.H. and Firefighter Hartman determined the baby would be born prior to their arrival at Kaiser Roseville. Respondent instructed Firefighter Barrett to park the ambulance to come to the rear to assist, and to make for a safer delivery.

9. At 6:15 a.m., a healthy baby girl was born in the back of the ambulance. The baby was placed on D.H.'s chest for warmth, and to allow the baby to breast feed, which stimulates oxytocin in the mother and slows vaginal bleeding. All three firefighters were excited and relieved. D.H. was emotional. She was relieved and elated that her baby was healthy, despite the circumstances, but distressed that neither the baby's father, nor any other members of her family, were present for the birth. She commented that she had multiple photos of the birth of her first child, and she was upset her family was not there to take photos.

10. One of the firefighters commented that there should be a photograph to commemorate the baby's birth. Respondent, being the only person present with a cell phone, took a picture of the scene from his vantage point at D.H.'s head. The photo showed D.H., her baby, and Firefighters Barrett and Hartman. D.H.'s breasts were partially visible under the baby.

11. Once Firefighter Hartman determined it was safe to continue transport, Firefighter Barrett returned to the cab of the ambulance and continued driving to Kaiser Roseville. At the hospital, patient care was transferred to the labor and delivery medical professionals. Respondent and Firefighter Barrett encountered the baby's father outside the hospital. Respondent told him D.H. and the baby were both well, and led the father to D.H. inside the hospital. Respondent showed the father the

photograph from the ambulance, and he requested respondent text him the photograph, which respondent did.

12. D.H. and her family requested photos with the three firefighters who delivered the baby. Several photos were taken. Once outside the hospital, the firefighters discussed the incident. Firefighter Hartman requested copies of any photos that had been taken. Respondent and Firefighter Barrett sent him their photos by text message, which included respondent's photo from inside the ambulance.

13. Firefighter Barrett and respondent drove Firefighter Hartman back to his fire station in Cameron Park. The three excited firefighters shared the story of the successful birth in the back of the ambulance with the firefighters at the station. Firefighter/Paramedic Stacey Minnich and Engineer Firefighter/Paramedic Matt LeBlanc were coming on duty. Firefighter LeBlanc asked whether the baby was a boy or a girl. Respondent showed his photo from the back of the ambulance to Firefighters LeBlanc and Minnich. Later, Firefighter Minnich reported the photo she saw to her captain, stating she found it inappropriate.

14. CalFIRE initiated an investigation, and dismissed respondent from his limited-term assignment based on this incident. CalFIRE also reported the matter to the El Dorado County Sheriff's office for criminal investigation. Detective Jeff Sargent was assigned to investigate. He interviewed, among others, respondent, D.H., the baby's father, and Firefighters Minnich, LeBlanc, Hartman, and Barrett. Detective Sargent closed the matter stating that any criminal allegations were unfounded. Following this criminal investigation, EMSA opened its own investigation. An EMSA investigator interviewed respondent, after which time the Accusation was filed. No record of that interview or an investigation report were presented at hearing.

Complainant's Evidence

15. Firefighters Minnich and LeBlanc testified at hearing. Each stated the firefighters who returned from Kaiser Roseville following the delivery were excitedly talking about the call. Each saw a photo of D.H. in the ambulance just following delivery. Her baby was on her chest and she was otherwise uncovered from the waist up. Her breasts were partially exposed. Firefighters Hartman and Barrett were in the photo, providing patient care. Neither recalled clearly seeing the patient's face.

16. Firefighter Barrett testified at hearing. He has been a firefighter for five or six years. He worked directly with respondent for six months at CalFire. He recalled the events on November 27, 2018, and generally corroborated the sequence laid out above.

Firefighter Barrett described a dynamic scene in the ambulance during the labor and delivery. All three firefighters were providing patient care. Once the baby was safely delivered, Firefighter Barrett specifically remembered Firefighter Hartman saying they should take a picture to commemorate the birth. Firefighter Barrett considered that a "joke" because at CalFire, "there are certain things people get in trouble for." He suggested that a photograph such as this is one of those things. He did not respond to Firefighter Hartman's suggestion except to "chuckle." He was not aware that the photograph was taken at the time because he was at D.H.'s feet ready to clamp and cut the umbilical cord. He could not recall at hearing or during his interview with Detective Sargent whether D.H. requested a photo.

Firefighter Barrett saw the photo respondent took in the ambulance once they arrived at Kaiser Roseville. He recalled that the photo showed the baby lying on D.H.'s chest and that he was in the photo, but did not recall seeing the patient's face or

Firefighter Hartman. When they arrived at the hospital and transferred care of D.H., Firefighter Barrett and respondent encountered the baby's father. Firefighter Barrett suggested to respondent that he share the photo from the ambulance with the father. He did not hear the discussion, but believed the father was excited about the photo, and that respondent sent it to him by text message. Firefighter Barrett "thought we were done at that point," meaning the family had the photo from the ambulance, and the call was over.

Firefighter Barrett was in several photos with D.H. and her family once they arrived at the hospital. The family wanted the "hero shot" of the firefighters who delivered the baby. He stated there is no rule against taking photographs in the hospital. On November 27, 2018, he was not aware of the policy against taking photos in an ambulance, but he was made aware of the policy later.

When they returned to Firefighter Hartman's station, all three firefighters were excited, talking about the call, and celebrating a successful birth. Most of their calls do not come with good news, and this call was a welcome exception. Firefighter Barrett worked closely with respondent for six months, and he estimated they went on 14 calls per day. He described respondent as a competent paramedic who is honest, has good judgment, and is proficient and careful with patients.

17. Firefighter Hartman testified at hearing. He has been a paramedic for at least three years. Firefighter Hartman took the lead on patient care in delivering D.H.'s baby. He explained that the baby started to crown while they were en route to Kaiser Roseville, and he determined they should park the ambulance for delivery. Other than the baby getting stuck for a short time, the delivery was smooth, and the baby was born healthy.

Firefighter Hartman saw the photo from the ambulance after arriving at Kaiser Roseville. He recalled the photo depicted D.H. from the vantage point of her head with her newborn on her chest and her breasts partially exposed, as well as himself at her feet providing care. His statements regarding whether he knew the photo was taken, whether D.H. requested it, and whether he or one of the other firefighters suggested it be taken was inconsistent throughout his testimony.

During Firefighter Hartman's interview with Detective Sargent on December 3, 2018, he explained that he was aware the photo was taken, and it "wasn't a secret." He explained the reason the photo was taken was that D.H. was upset because the baby's father was not there, and it was their first baby together. The photo was taken to document the moment for the family. At hearing, Firefighter Hartman could not specifically explain how he knew D.H. wanted the photo, but her emotional state implied she wanted the baby's father to be a part of the experience. Firefighter Hartman confirmed that when they arrived at Kaiser Roseville, the family seemed "excited" to have the photo, and asked for several more photos.

Firefighter Hartman received the photo by text message from respondent. He stated to Detective Sargent that he gave respondent his phone number because, "of course I would want a photo of me on that day," and he "wanted any pictures that were part of the call I was on." He was aware the photo was sent to the family. He did not share the photo with any other person. At the time the photo was taken, he did not believe it violated policy because he believed it was taken for the family. At the station, he was excited and shared the success of the call with his colleagues.

Respondent's Evidence

18. Respondent received an EMT license on September 15, 2009, through EMSA. That license expired on May 31, 2017. He has been a paramedic since February of 2017. In 2006, respondent began his career as a firefighter as an "explorer" in high school. While obtaining an Associate's Degree in Fire Technology, he worked for the Oakland Fire Department's work experience program. He was then a firefighter for several fire districts, including the United States Department of Agriculture Forest Service, Stanislaus Hotshots (Stanislaus Hotshots) team as a crew member, Fort Jones Fire Department as a Supervising Lieutenant, CalFire as a firefighter paramedic, Woodside Fire Protection District as a paramedic intern, and Tahoe-Douglas Fire Protection District as a crew member. He currently works for Mt. Shasta Ambulance service as a paramedic and is a seasonal fire fighter with the Stanislaus Hotshots.

19. On the morning of November 27, 2018, respondent was on duty at CalFire Station 89, and was assigned to the ambulance. He and Firefighter Barrett responded to a "delivery imminent" 911 call. When they arrived on the scene, several first-responders were already present, and Firefighter Hartman was leading patient care. Respondent encountered the baby's father, who was a "nervous wreck." D.H. was naked and had no belongings with her when she was transferred from her house to the ambulance. As D.H. was loaded onto the ambulance, respondent saw the baby's father try to get one last look at D.H. before the doors closed.

20. Respondent stayed near D.H.'s head and provided coaching for her to push, encouraged her to squeeze his arm and hand when she was in pain, and talked her through the delivery. Once the baby was born, respondent began getting supplies, taking vital signs, and assisting Firefighter Hartman with patient care. The baby was placed on D.H.'s chest.

21. Respondent heard Firefighter Hartman say they should take a picture because the baby was delivered and healthy, and they had all heard D.H.'s distress at not having her family present. Respondent looked at Firefighter Barrett who "shrugged" at the suggestion, and respondent believed everyone in the ambulance agreed the picture was appropriate. Of the three firefighters, respondent had the least amount of experience as a paramedic. He knew that Firefighter Barrett, with whom he worked frequently, was as respectful of patient privacy as he is. No one suggested that the photo would be inappropriate.

22. Respondent was the only person in the ambulance who had a cell phone camera with him. He believed that, given D.H.'s concern, her statements about the baby's father missing the birth, and her saying that she had many photos of her first daughter's birth, he had her consent to commemorate the moment with a photograph. Respondent testified that he barely looked at his phone screen. He took his phone out, snapped the photo, and then returned to patient care.

23. When respondent saw the baby's father at the hospital, Firefighter Barrett suggested respondent show him the photo from the ambulance. The baby's father was "elated," and asked respondent to send him the photo. D.H.'s family wanted additional photos before the firefighters left the hospital, which were taken with various cell phones, including Firefighter Barrett's. Firefighter Hartman requested copies of any photos from the call, as it was an exciting and successful call.

24. Respondent described the firefighters as being "ecstatic" as they returned to the fire station. The firefighters who were coming on duty that day asked about the call, and were told of the successful birth. Respondent recalled Firefighter LeBlanc asking whether the baby was a boy or a girl. He said they delivered a healthy

baby girl and showed Firefighters Minnich and LeBlanc the photo from the ambulance. Respondent did not share the photo with any other person or post it online.

25. Respondent was off duty for the following three days. His captain requested to see him, at which time he learned he was placed on administrative leave, and an investigation was pending. CalFire terminated him from his limited-term position without a meeting or hearing for respondent to respond to the allegations. Respondent appealed his termination and was granted a meeting; the appeal was denied. As a result, respondent was terminated "with cause," and cannot work for CalFire for at least one year, but he hopes to return. CalFire referred the matter to the El Dorado County Sheriff's office for criminal investigation. Respondent drove seven hours from his home in Northern California to meet with Detective Sargent. He relayed everything he remembered from the incident to Detective Sargent. He later drove seven hours again to meet with the EMSA investigator.

26. Detective Sargent testified at hearing. He confirmed that his report was an accurate summation of the interviews he conducted. He recalled that respondent broke down crying several times during the interview. Respondent showed great remorse for his conduct. He believed he had done a nice thing for D.H.'s family, but he ended up putting his license and career in jeopardy. Detective Sargent stated that respondent seemed sincere and forthright during the interview.

27. Respondent reiterated his remorse at hearing. He stated that he became a paramedic to care for and protect patients. He feels "terrible that [he] could have possibly caused harm or done something a patient didn't want." He also expressed remorse that he has inconvenienced D.H., and "tainted her daughter's birth." Respondent was devastated that this photograph he took for D.H. was a breach of patient privacy, which he takes very seriously.

28. Respondent explained that he has learned from this mistake. If presented with a similar situation in the future, he would not take the same action, and would explain there are rules against in-ambulance photography. He also explained he reviews the rules and policies for any jurisdiction he works in, and he understands that there are not exceptions, especially regarding patient privacy. Respondent has reviewed the policies and protocols relevant to his current assignment and county, and completed classes in medical ethics and the Health Insurance Portability and Accountability Act (HIPAA).

29. Respondent was an EMT for nine years prior to being licensed as a paramedic. He has never been disciplined or investigated previously. He submitted an employee evaluation from his current position as a paramedic for Mt. Shasta Ambulance Service, Inc. His supervisor described him as professional, a good communicator, respectful, responsible, and knowledgeable. He rated respondent as "proficient" or "surpassing" in every category.

D.H.'S TESTIMONY

30. D.H. testified on respondent's behalf. She described her experience on November 27, 2018, as "crazy and unexpected," but ultimately "wonderful." She planned to have her baby at Kaiser Roseville with the baby's father and her mother, who was present for the birth of her first child, supporting her, and her best friend taking pictures. D.H. has many photos from her first child's birth. She looked forward to the photos her best friend would take at this delivery. Once she realized she did not have time to drive to the hospital, her only focus was having a safe delivery, and her plan "was gone."

31. D.H. was upset and anxious, in addition to being in labor, while in the ambulance. She was alone with her baby coming quickly. D.H. admitted that her exact memory of the conversations in the ambulance were not clear. She believes there was a discussion about the photos she had of her first daughter at birth, and she recalled one of the firefighter/paramedics saying they needed an official time of birth. At that time, the time of birth was announced, everyone was relieved the baby was safe and healthy, and someone said there should be a photo. She does not recall whether she knew specifically when the photo was taken.

32. D.H. expressed great appreciation that she has a photo at the time of her baby's birth. She described the photo as "natural and beautiful." Her breasts were exposed because the baby was placed on her bare chest for immediate skin-to-skin contact, which is "how it is supposed to be."

33. D.H. feels as though respondent had her consent to take the photo because she expressed a desire to have a photo at the birth, even if she did not explicitly give her consent orally or in writing. She was also grateful that respondent sent the photo to the baby's father, and has no issue with respondent sharing the photo with his colleagues. D.H. suffered no harm, received excellent care, as did her baby, and was safely transferred to the hospital without complications. D.H. stated: "Because of [respondent], we have a beautiful photo right after [the baby] was born."

34. Detective Sargent interviewed D.H. about two weeks following her baby's birth. She stated at the time that she did not know a photo was taken while she was in the ambulance, but she was grateful that it was. Had she had her wits about her in the ambulance, she would have asked for it. D.H. told Detective Sargent that having the photo is "memorable," and she does not believe it was inappropriate for respondent to take it. D.H. acknowledged at hearing that she told Detective Sargent that she did not

know the photo was taken, but believes that her head was not clear two weeks following delivery. At hearing she recalled the firefighters talking about taking a photo.

LETTERS AND TESTIMONY OF SUPPORT

35. Respondent submitted 14 letters in support of his character, knowledge and skill as a paramedic and firefighter, and his dedication to the profession and his patients. Not all the authors specifically stated they knew of the allegations against respondent. Some wrote they are aware of the allegations, some implied they are, and others did not mention the topic. Some letters were undated, though most were signed and dated within the past year, during the pending proceedings.

36. Respondent's supervisors from the Stanislaus Hotshots, where respondent has served as a wildland firefighter for five seasons, submitted letters. Firefighter Shawn Baker, one of respondent's supervisors, drove three hours to appear at hearing and testify on respondent's behalf. Firefighter Baker, Superintendent of the Stanislaus Hotshots, has worked for the United States Forest Service for 29 years. He has been a fire crew supervisor for 13 years. He has been working with respondent for five years.

Firefighter Baker explained that as a fire crew that responds to a variety of emergency situations, the Hot Shots have high standards for its members. The team values trust, loyalty, honesty, and integrity, all of which Firefighter Baker sees in respondent. He also described respondent as dedicated, respectful, a leader, responsible, and receptive to training. In his experience, respondent follows the Hot Shots' Standard Operating Guidelines and Standard Operating Procedures.

Firefighter Baker stated that he sets a "firm standard" for his crew, and he does not easily give people his trust. He added that people who lack the characteristics

required of a Hot Shots crewmember do not last on his team. Because respondent is a paramedic in addition to being a firefighter, Firefighter Baker relies on respondent's skills when in the field. Respondent has a reputation as a "go-to person" both as a medic and a professional firefighter.

37. Brandon Hull, Captain of the Stanislaus Hotshots, wrote a letter that corroborated Firefighter Baker's assessment of respondent's skill, dedication, and character. He specifically wrote: "[respondent] has consistently showed a high level of performance, and is one of the more experienced, relied upon wildland firefighters in the organization. [Respondent's] medical training has been a valuable asset to the Stanislaus Hotshot Crew." Respondent is a senior member of the crew and "is charged with maintaining standards on and off the clock, and displays a high level of integrity. . . ."

38. Christian Sherfly is the Fire Chief at the Fort Jones Fire Department, and respondent's supervisor. He is aware of the allegations against respondent, and submitted two letters on his behalf. Chief Sherfly has worked with respondent for more than six years. He wrote that respondent has "an exemplary performance record without a single issue since he began [at Fort Jones Fire Department]." Chief Sherfly explained that Fort Jones is a small community and the Fire Department responds to a great variety of emergency situations. Respondent's ability to provide medical care onsite, his willingness to train his colleagues, and the integrity he brings to his position are invaluable. Chief Sherfly has seen respondent treat patients with "nothing but the utmost compassion and respect" and he believes respondent had only the family and D.H. in mind when he took the photograph in the ambulance.

39. Several firefighters and paramedics wrote letters that describe respondent as reliable, trustworthy, and an exemplary firefighter and paramedic. Justin

Mason, for example, a firefighter with CalFire, is aware of the allegations against respondent, and believes the paramedic profession would be worse off without the dedication, guidance, and skill respondent brings. He described respondent as a mentor who is committed to everyone's training and experience. Tyler Rollinson, Captain of the Groveland Hotshots, wrote that respondent "will always choose the hard right over the easy wrong because he believes in doing the right thing no matter what it takes." Phillip Johnson, Pastor of Berean Fellowship, implied he knows of the allegations against respondent, and wrote that he has watched respondent mature, learn, and develop, particularly in the last two years.

Discussion

40. The evidence established respondent used his personal cellphone to take a photograph of a patient in the back of an ambulance following the delivery of a healthy baby. He later sent that photo to the baby's father and the firefighter who delivered the baby, and showed it to two other firefighters. Taking a photograph in the back of an ambulance is specifically prohibited by the El Dorado County EMS policy regarding on-scene photography, as is using one's personal cell phone and distributing the photo. Additionally, taking and distributing the photo violated a patient's privacy and was against the CalFire Employee Code of Conduct.

41. EMSA has adopted "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (Guidelines). The Guidelines set a standard for levels of discipline for certain violations of Health and Safety Code section 1798.200. The Guidelines provide the following relevant factors to be considered when determining the appropriate discipline:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration;
2. Actual or potential harm to the public;
3. Actual or potential harm to any patient;
4. Prior disciplinary record;
5. Prior warnings on record or prior remediation;
6. Number and/or variety of current violations;
7. Aggravating evidence;
8. Mitigating evidence;
9. Any discipline imposed by the paramedic's employer for the same occurrence of that conduct;
10. Rehabilitation evidence;
- [1] . . . [1]
13. Time that has elapsed since the act(s) or offense(s) occurred.

42. Respondent's action was a violation of patient privacy, which is a serious and important part of his role as a paramedic. The balance of the factors, however, weigh in respondent's favor. No patient or the public was harmed; respondent has no disciplinary history, warnings, or prior remediation; this event involved one discrete incident; no aggravating evidence was presented; and it has been over a year since the

incident, during which respondent has worked as a paramedic and firefighter without issues. Additionally, respondent's testimony was sincere and his remorse credible.

43. Respondent produced a substantial amount of mitigating evidence. Foremost was D.H.'s testimony that she is grateful to have the photo respondent took, that she considers it "memorable," and though she was unclothed, the photo captured a "natural and beautiful" moment. She would have asked for the photo had she thought of it. Additionally, respondent acted in good faith that both D.H. and the baby's father wanted the moment captured through the photograph. He had no other motivation other than to preserve the memory. Importantly, D.H. received excellent care and no harm was done to her physically, psychologically, or emotionally.

44. Additionally, respondent has taken a class in medical ethics and one in patient privacy under the federal HIPAA law. His most recent employee evaluation shows no disciplinary or corrective issues, and that respondent is a competent paramedic. He also produced 14 letters from supervisors, colleagues, friends, and pastors who attested to his excellent character, skill as a firefighter and paramedic, and his dedication to patient care. Those authors who wrote they were aware of respondent's conduct believe that the incident was an aberration, and respondent had only the patient in mind. Firefighter Baker drove three hours to testify at hearing at attest to respondent's integrity, honesty, and trustworthiness. Respondent has earned Firefighter Baker's esteem, which he does not easily give.

45. This incident occurred in the midst of a chaotic and stressful emergency scene, during which a baby was born in an ambulance parked just off a major highway. Firefighters Barrett and Hartman's statements to Detective Sargent differed in part to their testimony at hearing. These deviations are understandable considering the situation and the time passed, in addition to a possible motive of self-protection.

46. The Guidelines state that discipline is to be progressive, unless the facts and circumstances of a case warrant more substantive discipline. Additionally, respondent "shall [be given] credit for discipline imposed by the employer. . . ." Following this incident, CalFire conducted an investigation and terminated respondent's employment.

47. Health and Safety Code section 1798.210 provides that an administrative fine is appropriate if a paramedic violates Health and Safety Code section 1798.200, subdivision (c), there is no actual harm to a patient, and if EMSA has not disciplined the paramedic in the preceding five years. When assessing a fine, "due consideration [shall be given] to the appropriateness of the fine with respect to factors that include the gravity of the violation, the good faith of the paramedic, the history of previous violations, any discipline imposed by the paramedic's employer for the same occurrence of that conduct, and the totality of the discipline to be imposed."

48. When all the evidence is considered, an administrative fine is the appropriate level of discipline. EMSA did not establish that public protection requires revocation, suspension, or probation. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786 [finding that the purpose of an administrative proceeding is not to punish the licensee, but to protect the public].) The Guidelines provide that for a violation of Health and Safety Code section 1798.200, subdivision (c)(10), the minimum fine is \$250 and the maximum is \$2,500. For a violation of Health and Safety Code section 1798.200, subdivision (c)(12), the minimum fine is \$500 and the maximum is \$2,500. Given the import of patient privacy and the totality of the mitigating circumstances, a fine of double the minimum for each violation is appropriate.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving the allegations in the Accusation. The standard of proof in an administrative action seeking to suspend or revoke a certificate that requires substantial education, training, and testing is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. Health and Safety Code section 1798.200, subdivision (c) provides, in part:

(c) Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the denial, suspension, or revocation of a certificate or license issued under this division, or in the placement on probation of a certificate holder or license holder under this division:

[1] . . . [1]

(10) Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

[1] . . . [1]

(12) Unprofessional conduct exhibited by any of the following:

(B) The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

3. Respondent took a photo in the rear of an ambulance, which is contrary to the El Dorado County EMSA policy regarding on-scene photography, and the CalFire Employee Code of Conduct regarding patient privacy. As set forth in Factual Findings 5, 6, and 40, complainant established cause for discipline under Health and Safety Code section 1798.200, subdivision (c)(10).

4. By distributing the photograph by text message, and showing it to colleagues, respondent failed to maintain patient medical information where no exception applied. As set forth in Factual Finding 40, complainant established cause for discipline under Health and Safety Code section 1798.200, subdivision (c)(12)(B).

5. All the evidence has been considered. As set forth in Factual Findings 47 through 49, the administrative fine is the appropriate remedy based on the Factual Findings as a whole. Respondent shall pay an administrative fine in the total amount of \$1,500.

ORDER

1. An administrative fine of \$1,500 is imposed on respondent William Clark, EMT-P License No. P37190, as a result of his violation of Health and Safety Code

section 1798.200, subdivisions (c)(10) and (c)(12)(B). The administrative fine shall be paid within 60 days of the effective date of this Decision.

DATE: January 21, 2020

DocuSigned by:
Heather M. Rowan
F08C72C19C3B4DA...

HEATHER M. ROWAN

Administrative Law Judge

Office of Administrative Hearings